Justice of the Peace
and
LOCAL
GOVERNMENT REVIEW
ESTABLISHED 1837

[Registered at the General Post Office as a Newspaper]
LONDON:
SATURDAY, OCTOBER 27, 1956
Vol. CXX. No. 43 Pages 670–684
Offices: LITTLE LONDON, CHICHESTER, SUSSEX
Chichester 3637 (Private Branch Exchange).
Showroom and Advertising: 11 & 12 Bell Yard, Temple Bar, W.C.2.
Holborn 6900.
Price 2*s.* 3*d.* (including Reports), 1*s.* 3*d.* (without Reports).

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REPORTS

NOTES OF THE WEEK

Probation Officers' Reports

At p. 679 we print a letter from Mr. Frank Dawtry, secretary of the National Association of Probation Officers, in reply to the note of the week in our issue of September 29.

We have so much respect for the opinions of Mr. Dawtry and his association, with which we are usually in full agreement, that, we think it proper, when we find ourselves unable to agree that we should give our reasons in some detail.

At the outset we wish to make it clear that our criticism is not of a particular probation officer, or of probation officers in general, but of a practice to which we think objection may be taken. We also want to affirm our belief in the value of the social reports furnished to the magistrates' courts. The point of disagreement between us may seem unimportant, but we think it involves an important principle. We are aware that opinions differ among magistrates, and indeed ours may be a minority opinion.

Practice differs among courts. Some years ago we heard of a chairman who apologized to a probation officer for not following her advice. Another chairman of the same court reproved a probation officer for making a specific recommendation without being asked to do so.

Opinions and Recommendations

The duty of a probation officer to make inquiries and to report to the court is clearly not limited to cases in which the question of making a probation order has already arisen. It is much wider than that. Under para. 3 (5) of sch. 5 to the Criminal Justice Act, 1948, one of the duties of a probation officer is "to inquire in accordance with any directions of the court, into the circumstances or home surroundings of any person with a view to assisting the court in determining the most suitable method of dealing with his case." Obviously this implies a report to the court dealing with facts ascertained by the probation officer, but we are not suggesting that a hard and fast line must be drawn between facts and opinions. We have always thought it quite proper for a probation officer to state whether he thinks an offender is likely to respond to probation if the court should have that in mind, or to say that for some reason the offender does not appear to be suitable for a voluntary home or hostel. What we think unsatisfactory is for a probation officer to volunteer a suggestion that a particular form of punishment should be imposed, even though it may be coupled with a condition such as "unless he is willing to accept help." The probation officer is not a member of the court, he is not an assessor, and we do not think it right to describe him as an adviser to the court. The decision of the court should appear to be, as it is, that of the magistrates alone. If the parties and the public see that the magistrates have on the suggestion of the probation officer, decided that the defendant should for instance go to prison, the erroneous impression may be created that the judgment was that of the court and the probation officer, and that the probation officer is partly responsible.

If the practice which we have ventured to deprecate is followed, it is probably because the magistrates desire it, and they rather than the probation officers are responsible. We admit quite frankly that it is a matter of opinion, and we certainly do not wish to appear dogmatic about it.

Pronouncement by the Lord Chief Justice

Having stated the opinions we have held and given our reasons, we can now add what is much more important, a pronouncement by the Lord Chief Justice.

At the annual meeting of the Magistrates' Association, Lord Goddard referred to the case which occasioned the observations by a chairman of quarter sessions and said it was clear from s. 43 of the Criminal Justice Act that magistrates could ask for an opinion from probation officers. Considering the magnificent work which probation officers were doing, there was usually no better person to go to for assistance, especially when an officer had known the defendant for some years.

If a probation officer were asked his opinion, he was right to state it perfectly frankly. If from his knowledge of a defendant he believed that now the only thing good for him was prison, why

should he not be allowed to mention it? To say it was contrary to the law was nonsense. Nevertheless, the final decision was the magistrates'.

This makes it clear that if a probation officer is asked for his opinion he should have no hesitation about expressing it, and that magistrates are entitled to ask for an opinion. That is a matter for the magistrates.

Guardianship of Infants Acts and Illegitimate Children

Whether magistrates' courts have jurisdiction under the Guardianship of Infants Acts to make orders of custody and maintenance in respect of illegitimate children has for long been a matter upon which opinions and practice have differed. We have always considered that, in the absence of a decision of the High Court magistrates should not apply the Acts except where it was clear that illegitimate children were included in the operation of a section.

The point has now been settled by Roxburgh, J., on an appeal from a decision of justices, in *Re T. and T.* (*infants*) (*The Times*, October 13).

The justices had assumed jurisdiction to hear an application by the putative father of the infants, but had decided against him, and so he appealed. The learned Judge held that as such words as "father," "mother" and "child" ordinarily applied only to legitimate relationship, there would have to be compelling reasons for including the putative father where the word "father" is used in these Acts. He found no ground for so holding, and accordingly he dismissed the appeal, on the ground that the justices had no jurisdiction to make an order. If they had had jurisdiction, their decision on the merits would have been right.

The learned Judge observed that if such jurisdiction were conferred it would have to be by considerable modifications in the Guardianship of Infants Acts. That a change in the statute should be made, so as to bring illegitimate children within the benefit of the Acts seems desirable, now that the existing law has been clearly laid down as excluding them.

Clutchless Learner-drivers

A point similar to one which we have referred to on a previous occasion is dealt with by an article in the *Manchester Guardian* of October 11. Modern methods of simplifying the operations necessary to control the movement of a motor vehicle have many advantages, but there will for years to come be many vehicles on our roads which do not incorporate these simplifications and which are, to a greater or less extent, more difficult to control, particularly in traffic, than those which do. At present a "learner" who passes his test in a clutchless car obtains a licence which authorizes him to drive a car with a normal clutch and gearbox. The article in question points out that this is a matter which requires serious consideration because "the ability to handle a car which demands no skill in manipulating a clutch by no means implies that the driver can safely be entrusted on the road in a car with a conventional transmission system."

The remedy suggested is that vehicles with automatic or semi-automatic transmission should be put into a new group in the second schedule to the 1950 Driving Licences Regulations so that someone who learned and passed his test on a vehicle in that group could have his full licence limited to vehicles of that group. If he wished to drive a vehicle with the more "old fashioned" type of transmission he would have to pass a test on such a vehicle. The reverse would not apply because there is no difficulty in driving a car which has clutchless transmission when one has been accustomed to the other type.

If the authorities think this suggestion is worthy of consideration it should be a simple matter to amend the Regulations accordingly.

Acquisition of Land

Earlier this week we issued at the price of 4*s.* net (postage and packing 6*d.* extra) a six page pamphlet by our occasional contributor, Mr. A. S. Wisdom, setting out in tabular form the powers of government departments as purchasers of land. Many of our readers have more to do with the powers of local authorities for acquiring land than with the powers of the central government, but even they may find it useful to have this pamphlet for reference. The last 10 years have seen a good deal of simplification of the procedure, through the passing of the Acquisition of Land (Authorization Procedure) Act, 1946, which has been applied for many purposes. In the last column of Mr. Wisdom's table, his "observations" show how far this process has gone. Nevertheless there are still some governmental powers of acquiring land which have their own procedure, or depend on the Lands Clauses Act, 1845.

There are also special points to remember in particular Acts, such as the Town and Country Planning Act, 1947. There is, perhaps, no strong reason for urging that the various powers be further rationalized, since many of them are used but rarely. Broadly, there is a distinction between the defence ministries, including those producing and procuring supplies for defence, and the civil departments. Again, some of the latter have been given powers of their own, whilst others rely upon the general powers now vested in the Minister of Works. Amongst the methods used, are provisional orders and ordinary compulsory purchase orders and there are some powers surviving which do not conform to either pattern. Apart from our local government readers those of our readers who are in private practice may find this pamphlet most useful, since they may at any time have to advise a client whose land is being taken for some governmental purpose. For whatever class of work the pamphlet is consulted, it will be found to set out in convenient form the powers of each Minister and department, with the purposes and procedure for and by which land can be acquired.

Avoiding Unnecessary Committals

In *R.* v. *Bodmin Justices, ex parte McEwan* [1947] 1 All E.R. 109; 111 J.P. 47, the High Court criticized justices who had allowed a charge of wounding with intent to be reduced to a charge of unlawful wounding and had then, with the accused's consent, tried the case summarily. In that case the accused had stabbed another man with a bayonet and although at first the injured man was not expected to live he did in fact recover. Lord Goddard pointed out that had the man died the accused would have been charged with murder, and he said that the accused man should never have been tried by justices but should have been sent to the Assizes.

We have a report in *The Western Daily Press* in which it is stated that Lord Goddard recently dealt with another aspect of "reducing" charges. The report does not state where he is said to have made the statement but records that "recently the Lord Chief Justice, Lord Goddard, gave a direction that where only a small amount was involved in cases of alleged breaking and entering and the theft of property the prosecution should 'use common sense' in deciding whether or not to proceed on the first charge in view of the fact that it normally involved a committal to quarter sessions with consequent expense to the public."

This was referred to by a prosecuting solicitor who asked that the breaking and entering charge against a youth who had broken into a bakery and stolen 1*s.* 6*d.* worth of cakes should be withdrawn.

On the assumption that the Lord Chief Justice's remarks have been accurately summarized in the above extract we feel that they must be considered in relation to his remarks in the case referred to at the beginning of this note. This would mean that even though the amount of property actually stolen happened to be quite small yet if the "breaking" was a serious one the mere fact that the offender was unlucky in not finding more to steal would not justify the prosecution, or the justices, in seeking to ignore the more serious offence. We think it probable that Lord Goddard's remarks are intended to apply to cases in which the amount of property stolen is inconsiderable *and* the breaking is not of a serious nature.

The Difficulties of Long Term Planning

Some time ago Mr. Michael Rowe, Q.C., speaking about Development Plans to the Royal Institute of Chartered Surveyors referred to the dangers of long term schemes contained in such plans.

The worst of these problems were comprised in road and school proposals shown in many cases as diagrammatic or symbolic projects to be undertaken 10 or 20 years later. Property shown under these markings on maps had already depreciated and as years went by would become unsaleable. There was a real risk of creating areas of stagnation.

These remarks uncover a substantial and a difficult problem. We all know cases where the plotting of a school or a highway in the relatively far distant future has led to a sterile market for the unfortunate property owner. Schools and roads have in recent years both been subject to indefinite postponement due to lack of capital investment. Changes in the economic position of the nation may lead to an acceleration or slowing down of their provision. These factors import an element of uncertainty into planning and no doubt result in substantial injustice to the individual property owner.

It does, moreover, appear to be the case that most property-owners, particularly relatively small ones, are far from knowledgeable about the Town and Country Planning Acts and their impact upon their property. They are vaguely aware that Town and Country planning is for the preservation of amenity and the proper siting of industry and residential housing and so on but may quite easily be blissfully unaware that their own particular property has been designated for a future hospital, school or car park.

They are, of course, entitled to inspect the development maps but few of them exercise this right and quite often it is not until they are in the process of completing a deal of their property that they discover the real position. They may even get so far as to interest a prospective purchaser at a good price only to find that the deal falls through when his solicitors discover and advise upon the implications of the development plan. Then the consternation and annoyance are enormous.

This can result in real injustice to the individual—to, for example, the necessitous widow who is compelled to sell, or the man who has to change his work and raises extremely thorny problems.

Consider the uncertainty of long term planning schemes. It may be that if the nation is increasingly prosperous this makes more certain the fruition within their planned terms of some projects. The financial barriers against local government projects have in recent years been lifted only to be clamped down again due to an adverse swing in the economic pendulum. Obviously changes in finance can always be a limiting factor in this direction.

Again what about the out-dating of plans by scientific advance? The jet propulsion of aircraft was an extremely rapid development which has revolutionized passage in the skys. Progress in the spheres of atomic energy may radically change our industrial lay-out in 20 years. Already developments in the H-bomb are confronting our defence experts with outstanding problems as to how to protect our civil population and the rest of our strategic resources. Who can foretell with confidence what alterations will have to take place within the next 20 years? The development of helicopter transport may in the next two decades lead to a substantially increased need for roof-top landing-grounds. It requires no undue imagination to envisage dozens of ways in which important alterations may be required to development plans.

Dog Licences

Although the annual fee of 7*s.* 6*d.* for a dog licence has remained unchanged since 1878 this small payment does produce an appreciable amount of revenue: in some authorities the annual collection exceeds £20,000.

There are, however, provisions exempting from payment of licence duty the owners of dogs kept and used solely for tending sheep or cattle on a farm: generally exemption is limited to two dogs but in exceptional cases this figure may be increased to not exceeding eight, depending on the number of sheep kept. The exemptions granted to shepherds working on a sheep farm are independent of those granted to the occupier of the farm. These exemptions in the farming counties are large in number and the corresponding loss of revenue amounts to a considerable sum, possibly up to something of the order of £3,000 a year. What is more important, however, is the amount of administrative work which the present system entails. When responsibility for local licences was transferred to county and county borough councils the method of dealing with applications for exemption was dealt with in S.R. & O. 1908 No. 844, the conditions of exemption being set out in s. 22 of the Customs and Inland Revenue Act, 1878. This section also provides that an applicant for exemption is to make a declaration on a form to be provided by the Commissioners of Inland Revenue, and shall, if exemption is granted, be entitled to receive a certificate of exemption. The exemption is for one year only, and is renewable on January 1 in each year. By s. 5 of the Dogs Act, 1906, the grant of a certificate of exemption requires in England and Wales the previous consent of a petty sessional court. Under the section, in a case where consent is given, the clerk to the justices is to send the consent to the clerk to the council, and it then devolves on the council to cause the certificate of exemption to be issued and delivered. We believe that this procedure is in some counties followed in the breach, and in others the greater part of the year may elapse before the applications for exemption are approved by the courts and forwarded by the clerks to justices.

What can be done to improve matters? The simplest course would be the abolition of exemptions, not a course likely to result in hardship under present day conditions, although it is true that in total the funds of a relatively small number of counties would benefit appreciably. Its effect would be considerably to reduce work in the offices of both clerks to justices and local taxation officers. We realize, however, that this suggestion may not appear simple to politicians and if, unusually, they should be unwilling to take the logical action at least a simplification of procedure should be possible, by which the passing of documents to and fro could be eliminated.

An examination directed to this end could well prove a rewarding exercise.

Standardisation of Accounts—and Glastonbury

In local government, no less than in the world of commerce, a uniform basis of presentation of the financial results of the bodies concerned is essential if the maximum advantage is to be obtained from comparative financial statistics. For this reason we welcome the attempt of the Institute of Municipal Treasurers and Accountants to give a lead: their publication of "The Form of Published Accounts of Local Authorities" is timely and may well mark a decisive step forward in the practice of local government accounting. We note with interest the influence of commercial thought and practice, particularly in connexion with statements of capital expenditure and financing, and with balance sheets: the latter are to be presented largely in the same form as company balance sheets in lieu of the present method known as the double account system, the essential feature of which is a complete separation of capital and revenue items.

A few treasurers have been able to present their 1955–56 accounts on the new basis but the large majority are now considering the practical points involved and their decisions will be reflected in the 1956–57 publications. We did not therefore expect to see the new form exactly reproduced in the accounts of the Glastonbury corporation for 1955–56 but having learnt from past publications of this authority of the original turn of thought of Alderman H. F. Scott Stokes, M.C., M.A., J.P., at the relevant time chairman of the finance committee, we expected something different in the latest printing—and we have not been disappointed. The borough of Glastonbury Consolidated Balance Sheet admittedly is not exactly in the recommended form but has two great advantages for the layman, and indeed from his point of view we regard it as superior to the Institute recommendation. In the first place it acknowledges the present overwhelming importance of housing to most local authorities by showing separately information about housing capital expenditure, the way in which such expenditure has been financed, and about housing reserve funds. (This view of housing would be doubly right should recent pronouncements from Blackpool prove to be the authentic shape of things to come!). Secondly, the balance sheet shows quite clearly the amount of the revenue balance and of what it is composed (debtors, stores and cash, less creditors). Those with memories of budget debates, and particularly chairmen of finance committees who have had to meet the attacks of balance raiders, will immediately appreciate the value of such a clear exposition.

The accounts show that Glastonbury continues to be wisely administered: Alderman Scott Stokes could justifiably have repeated his words of 12 months ago when he said that rates levied now are fair and reasonable as compared with 1938–39, and with regard to the rate fund balance:—"We are all right!"

CAPITAL PUNISHMENT—THE LATEST ROUND

By THE REV. W. J. BOLT, B.A., LL.M.

Students of criminology who were titillated to find a Conservative Party Conference debating Capital Punishment, may be grateful for a factual supplement to the reports in the daily press.

The attention given to the issue at a time when all politics must be overshadowed by a sinister international crisis is worthy of special note. The agenda was overloaded, and the time allotted to what the chairman deemed the more preponderant topics was severely rationed. But, by my own measurement of time, the conference devoted three times the period to Capital Punishment that was allotted to Cyprus, and 10 minutes more than was given to Suez. This is the first aspect which I commend as worthy of consideration.

Next, out of 394 resolutions which delegates had tabled, no fewer than 33 dealt with the proposal to abolish the death penalty. The wording of the motion which was selected for the actual debate, ran, "That this Conference emphatically opposes the terms of the Death Penalty (Abolition) Bill, but urges that the law of murder be amended so as to limit the imposition of the death penalty." All the others were substantially to the same effect. All expressed general disapproval of abolition, but nearly all added a rider either that the law of murder needed amendment or that the scope of the penalty needed narrowing.

Not one resolution commended total abolition; but the chairman with praiseworthy impartiality, allowed an equal hearing to both sides. It was soon clear to delegates that no issue on the Agenda caused such widespread emotional disturbance. There were moments when restraint and decorum were thrown overboard. Interruptions and noisy heckling recalled the turbulent hustings of other days, and the chairman was constrained several times to insist on a fair hearing for obstructed speakers.

The voting was by show of hands, and the chairman declared the substantive resolution passed "by a substantial majority."

The conference was divided into three sections, neither of which was visible to the other two; and I asked observant delegates in the other sections to estimate the ratio of supporters to opponents of the resolution. In the main hall, I calculated that the voting was in the proportion of 11 to one. I was informed that in the balcony and in the overflow hall, the ratio was roughly nine to one.

The Home Secretary was present, and said that he had come merely to hear the debate and not to speak. He did intervene, however, for a few moments, to repeat his appeal to the House of Commons to avoid premature steps that might menace the maintenance of law and order.

Throughout the whole exciting discussion, I did not note a single remark that has not been made scores of times by the protagonists of both sides. There was not one argument or observation that was new or original, and yet at times this staid assembly evinced an excitability that amounted to frenzy.

The significant feature of the debate is that the issue has grown to such magnitude. Probably never before has one of our national parties devoted so much of the precious time of its national conference to an issue like this. The full story of the controversy itself has yet to be written. It is longer than we realize—the movement for abolition is more than two centuries old; and Llandudno made it clear to me that the struggle has attained a new status. A new round has begun—the controversy has entered upon a new phase of its existence.

REVISED PENALTIES UNDER THE ROAD TRAFFIC ACT, 1956

Are persons convicted of certain offences under the Road Traffic Act, 1930, after November 1, 1956, liable to the newly prescribed penalties, although their offence was committed before that date? This question will arise in every magistrates' court when the new sections come into operation on November 1.

A similar position arose in 1940 when certain penalties under the Defence Regulations were increased. It was argued in *D.P.P.* v. *Lamb* (1941) 105 J.P. 251, that a person was liable to the penalty that was lawful at the date of his offence, and that a subsequent amending regulation had no retroactive effect. It was held, however, that that was not the law. The judgment of Tucker, J., as he then was meets the present position precisely when he says:

"It is true that, so far as the creation of any substantive offence is concerned it is not retrospective. It is not making an offence something which previously was not an offence, and it is, of course, dealing with the future when it says 'Any person is convicted' and is not referring to any person who had been previously convicted. But where I think that it has a retrospective effect is with regard to the penalty which it imposes. If we suppose that next week the regulation with regard to looting was to be amended by a provision which said, 'Any person convicted of looting shall suffer the penalty of death and regulation so-and-so shall be amended accordingly,' I think that it would be difficult to persuade anybody who was next week convicted of the offence of having looted six months ago that that regulation had not a retrospective effect. I think that it clearly would have a retrospective effect *qua* punishment and, similarly, that this regulation has a retrospective effect with regard to the penalty which it imposes.

"That merely throws us back on the application of the principle to a case of this kind, which is rather a different case from any of those in the authorities to which we have been referred. One has to look at the regulation and see what is the language which has been used. When one finds the regulation dealing with what was then an existing and known offence and dealing with a future conviction of a person of that offence, and it uses the simple, plain and clear language that any person convicted of that offence shall be liable to certain penalties, I think that it is clear that the language used is in terms applicable to an offence which has already been committed. It is not a case of a regulation creating any new offence, nor is it, for that matter, a regulation providing for some different kind of penalty or punishment altogether. It is merely increasing the amount of a monetary fine. The words are, in my view, clear and, although I do not, I confess, altogether like the idea of punishments being increased after the offences have been completed, none the less, if the language is clear and that is the result, I think it is impossible to escape from the consequences of the language which has been used."

It is true that here an Act and not an Order is concerned, but the principle is identical.

The transitional period will inevitably produce anomalies particularly where offences under s. 35 are concerned. It is largely fortuitous whether a defendant answering a summons will appear on October 31 or November 1—in the former case disqualification will be automatic except for special reasons; in the latter it will be entirely discretionary. The change in the law can hardly be described as a special reason connected with the offence, nor for the same reason can it justify absolute or conditional discharge. In suitable cases there may be good reasons for the court adjourning the hearing until after the vital date and imposing the sentence then, but there are obvious objections to this course.

In reverse, so to speak, there is a similar position in relation to penalties. A defendant appearing on October 31 to answer a summons for careless driving will be liable to a fine of £20; one appearing the next day will be liable to a fine of £40, although the offences may have been committed on the same day.

It seems impossible to suggest any guiding principles. The solution will have to lie in the exercise of the traditional good sense of the magistrates.

ADOPTED CHILDREN AND PAROCHIAL AND BAPTISMAL REGISTERS

[CONTRIBUTED]

The April issue of *Moral Welfare* (the quarterly review of the Church of England Moral Welfare Council which often contains articles of interest to those connected with the work of the children's departments of local authorities or with juvenile courts), contains a summary of the report of a small commission appointed at the request of the Archbishop of Canterbury jointly by the Legal Board of the Church Assembly and the Church of England Moral Welfare Council to consider some questions affecting adopted persons and entries in parochial registers. The recommendations are published as a leaflet by the Church Information Board.

The entry to be made in marriage registers was reviewed by the Registrar General in 1952 following a question in the House of Commons (*Hansard*, June 16, col. 76), when the Minister of Health was asked if he would amend the instruction to registrars of marriages which required them to insert a reference to the adoption when registering a marriage where one of the parties had been adopted. Later in 1952, revised instructions were issued to civil registrars and also incorporated in the booklet *Suggestions for the Guidance of the Clergy* issued by the Registrar General, and in the corresponding booklets issued to authorized persons for registered buildings and for synagogue secretaries. The commission had no difficulty in recommending that these suggestions should be followed by incumbents, namely, that normally the adoptive father's name should be entered in the marriage register without qualification or any mention that the party concerned has been adopted; exceptionally where the party is known by a surname different from that of his or her adoptive father or where a woman has been the sole adopter, the words "adoptive parent" may be added after the surname if so desired by the party concerned.

BAPTISMAL REGISTERS

Registers of baptism are governed by the Parochial Registers Act, 1812, and the appropriate schedule provides for the entry of the parents' names. The Report of the Hurst Committee on the Adoption of Children (1954 Cmd. 9248) raised doubts whether adopters could be regarded as parents for the purposes of baptism or whether they are parents only " in relation to the future custody, maintenance and education of the child." (The Departmental Committee's attention does not appear to have been drawn to the House of Lords case of *Coventry Corporation* v. *Surrey County Council* [1935] A.C. 199, and in particular to Lord Atkin's judgment (which might appropriately be called the adopted child's charter) dealing with the construction of statutes relating to the custody, maintenance and education of children). The commission agreed with the recommendation of the Hurst Committee in para. 196 of their report that any doubts about the extent of adopters' rights and obligations should be removed and that they should be given the status of parents in all matters affecting the child, but they did not agree with the recommendation in para. 248 that incumbents should enter the child's name in the baptismal register as " the adopted child of . . ." They recommended that the bishops should be asked to bring the present uncertainty to an end and that the present practice of many incumbents of entering the adopter's names as parents without qualification (save in exceptional cases like those mentioned above) should be continued.

The foregoing deals with baptism after adoption. With regard to baptism before adoption the Hurst Committee recommended (para. 258) that the guardian *ad litem* should have the duty of ascertaining and informing applicants whether the child has been baptised and if so the date and place. This is already one of the points about which a registered adoption society must make inquiries under sch. 3 to the Adoption Societies Regulations, 1943, before placing a child for adoption. Hitherto however there has been a difficulty where an adopted person baptised before adoption required formal evidence of his baptism (*e.g.*, on being prepared for confirmation) as any extract from the register of baptisms would reveal his surname before adoption and probably information about his parentage as well. The commission have recommended a procedure, details of which have been circulated to all diocesan bishops whereby adopters can obtain a shortened baptismal certificate in the adopted name of the child concerned, thus overcoming the difficulty mentioned above.

LOCAL GOVERNORS AND GOVERNED

In our issue of September 29, Mr. Frank L. de Baughn disclosed the result of his inquiries about apathy in Northern local elections. A number of the answers given to his questions were decidedly illusion-dispelling to those who believe that Great Britain is an educated democracy; other answers indicated that those questioned might have voted if issues of sufficient interest and importance had been presented for their judgment. Our contributor concluded that more publicity for municipal affairs would get rid of some of the apathy. This is undoubtedly true although local elections must always run a poor second to the choosing of Parliament both because of the presentation of the issues, in which every organ of publicity is used to the limit by the parties and their extra-mural associates, and because of the importance of the issues themselves, affecting as they do the principles or the pocket or both of every adult. And as Lowell wrote:—"I may not believe in princerple but o I du in interest."

Mr. Baughn's research was apposite because the question of publicity for local government has this year been brought into prominence in a number of ways. The Institute of Public Relations have invited the local authority associations and N.A.L.G.O. to discuss proposals made by the Institute for encouraging public relations activities in local government, and there were debates on public relations in the House and at the N.A.L.G.O. Conference in June.

The evocation of intelligent interest about local government in the average elector is almost as difficult a task as that of the long-married wife who wishes to conduct at the breakfast table an intelligent conversation with her husband about some important topic such as her latest hair style or the price of a new gown. Difficult though the two situations are endeavours to dispel apathy are praiseworthy and if disasters of various importance are to be escaped in both cases it is essential that they should be successful. We leave advice on domestic dissonances to the slightly macabre experts of television and the press and consider some of the problems of local government publicity as discussed in the interim (1947) and final (1950) reports of the committee on Publicity for Local Government, and elsewhere.

The interim report stressed that the problem is mainly one of widespread lack of knowledge leading to apathy and publicity ought therefore to be directed to the mass of the population, through as many agencies as are available, and as persistently as possible. The general object, in the view of the committee, should not be to make a "Use your Vote" appeal but to cultivate more day-to-day, all the year round, democratic interest in local government, and to attract the best men and women to its service as members and as officers. Two main methods of achieving this object were advocated. The first was that there should be an efficient service by which all necessary information and assistance could be given to individuals: the second was the fullest possible use of the facilities offered by the local press for supplying regular information. In general the committee agreed with a statement on " Local Authorities and the Press " issued by the Association of Municipal Corporations which advocated full information to the press including the advance issue of council agenda and accompanying documents: the committee was convinced that local government cannot flourish on the " backward look " and emphasized that a main weakness of local government publicity was that in many cases public comment was not possible until decisions had already been reached.

The final report of the committee referred again to relations with the press, in the light of answers from 700 local authorities, most of whom stressed that their relations with the Press serving their area were excellent. In general the press were given full information about council and committee meetings and press conferences were a common feature. There was, however, divided opinion about allowing publication of agenda with accompanying documents and press comment before the council meeting: the committee adhered to their original recommendation that there should be no embargo on advance publication or comment. The County Councils Association who reviewed this question in 1950 expressed the opinion that it was a matter which rightly fell within the discretion of individual county councils: following is a summary of the way in which one county council has exercised this discretion:—

"(*a*) the press should be able to publish extracts from the annual reports of chief officers as soon as they are released from the office, provided that the reports had been previously circulated to members of the council;

(*b*) provided that adequate steps can be taken to safeguard the advance publication of committee decisions over which the council may themselves have some control, no objection will be raised to the press being allowed to report certain decisions of committees possessing delegated functions;

(*c*) the press have the right to approach the county council at any time for information;

(*d*) where the editor of a paper received a letter for publication affecting the work of the county council, he would, as soon as possible, send a copy to the clerk of the county council so that a reply, if thought desirable, could be published in the same or following issue of the paper."

In the House the June debate ranged over a wider field: the public relations of Government departments, hospital boards, local authorities, and public corporations were all discussed and a resolution adopted noting the importance of the relationship between these public authorities and private individuals in a free democratic society and urging the Government to take such measures to study and improve such relationships as may be necessary. The importance of human relations was stressed repeatedly in the debate: we quote the following . . . "if . . . human relations are wrong the whole thing is in a danger of foundering. Democracy means a sense of participation and common effort and we shall not get that unless we try for it." . . . "Of course, the period of preparation is in many ways the most important period and that is why public relations . . . must be called in for policy formulation." . . . "A good local authority is aware of the need to keep in touch with the public, but for the ordinary person it is not the councillor and not even the town clerk who is the council; the council is the girl behind the counter to whom we go when we want a house, when our refuse has not been collected or whom we ring up about a hole in the road."

In winding up the debate the Financial Secretary to the Treasury (Mr. Henry Brooke) thought that public authorities were doing their best to meet the problems of public relations work, that there was no need to revive the committee on Publicity for Local Government, that public relations officers were necessary only in the larger authorities (pointing out that public relations is a field in which money can be squandered), that he did not agree that every committee meeting should be open to the press, and gave examples of the instructions about public relations issued to each new civil servant.

Thus while there is general agreement about the defects of the present situation there are different views about some of the remedies.

The Institute of Public Relations disagrees with the Financial Secretary on at least one point: it considers that the decline in local government public relations work can be checked only by the provision of some effective central stimulus and urges therefore the establishment of a central advisory body.

All those concerned emphasize the need for the use of the press but there is difference of opinion about admission to committee meetings and advance comment on agenda. It is only fair to say that in a relatively small number of cases where political considerations have influenced reporting the press are at least partly to blame for restrictions. Then there are differences about the need for public relations officers and for public relations committees: although N.A.L.G.O. recommended that every local authority should appoint such a committee this view was not accepted by the committee on Public Relations who thought that it overlooked the fundamental principle that publicity should be an integral part of administration. Again, while that committee concerned itself with methods of giving information to the public the House debate rightly stressed the importance of good relations between officials at all levels and the public: Mr. Benn truly said that public relations is a new phrase for the question of behaviour. This we regard as possibly the most important point of all for a democracy admittedly imperfect but striving to live and function better; and no doubt it will be stressed in the forthcoming conferences.

These conferences may well resolve some of the differences and, we trust, work out significant improvements in this somewhat neglected aspect of local government.

PLANNING CONTROL—ITS APPLICATION IN THE COLONIAL FIELD

By ELLIOT FITZGIBBON, O.B.E., M.A., B.A.I., M.T.P.I.

While the differences between the various forms of subordinate legislation are well established and recognized in England, they are not necessarily mutually exclusive in adaptations of English local government made for other countries with entirely different histories and conditions and in wholly dissimilar stages of evolution. It is, however, none the less necessary to recognize the different principles so far as circumstances permit, since legal rulings and decisions of the courts must continue to be influenced by established practice and case law, as these are set forth in text books and administrative records and law reports in this country. These differences, as between byelaw-making powers and planning control, are briefly dealt with in the following pages.

Byelaws formerly required confirmation by the courts, but the transfer of this jurisdiction from the courts to a department of the Central Government did not alter the essential nature of confirmation or approval. It is the duty of the confirming or approving authority to satisfy itself, in a judicial spirit, that all byelaws proposed are such as, if challenged in the courts by persons affected, would be upheld.

Strictly speaking, a local authority is entitled to frame its byelaws, adopt them, and publish them, and then submit them to Government for approval. To avoid inconvenience to all concerned, however, a settled practice grew up in England, of local authorities forwarding their proposals in draft form to Government before passing them through their local stages. By this means, and by the issue of model byelaws by the Government department concerned, it is possible to secure some measure of uniformity, and to avoid errors. This is a practice which could hardly be dispensed with in colonial conditions; for the work of making and approving byelaws in countries where a system of local government has been newly established is not simplified by departing from accepted theories and established practices, and it is sometimes rendered peculiarly difficult by other considerations.

The establishment of a system of local government where no such system existed before, and where no central department of Government, with an established and experienced organization for the control of it, was in existence either, may require the

making and approval of byelaws on a scale beyond the capacity of the local authorities on the one hand, and of Government on the other, to deal with, while ensuring at the same time that immunity from errors of substance and form which is so important a matter in this branch of subordinate legislation; though considerations of urgency may have to prevail for a while over other considerations, so that some small degree of imperfection in the byelaws submitted and approved has unavoidably to be permitted in the early stages.

A further difficulty of some magnitude, and even more inconvenience, may be presented by the continuance as byelaws under a Local Government Act or Ordinance of Rules and Regulations made by unrestricted authority under other Acts framed for pre-local government conditions, since, as already pointed out, the rule-making powers of a Governor under such Acts are always far more extensive than byelaw-making powers under a system of local government could ever be permitted to be, and such rules have often to be carried forward by saving clauses to operate as byelaws under the new Local Government Act or Ordinance, although they are rarely admissible in form, and are sometimes also inadmissible in substance for this purpose.

In spite of this disability, however, there must always be a tendency to make use of such old rules in drafting new byelaws, and even to make use of whole groups of them in submitting new byelaws for approval. The work of scrutiny and approval by Government is, in such circumstances, rendered exceedingly difficult, and the mass of imperfect byelaws, which will have to be rectified at some future date, may create formidable difficulties for the administration, not to mention the courts and the police.

It is necessary that this tendency should be watchfully restrained. No new byelaws should be submitted for approval which have not been drafted with great care on the established principles. Pains should be taken to ensure, by reference to the enabling Act, that every byelaw prepared is strictly within the powers granted by the Legislature. These powers are usually specified in detail, and anything which is not, beyond any doubt, allowable under one or other of those specified powers is probably not allowable at all, and cannot be assumed.

But the imperfect byelaws which do have to be approved during the nursing stages of a new-born system of local government must be rectified both in form and substance as opportunity arises thereafter. Any need for revision on other grounds should be taken as an opportunity to effect this rectification, and should also be seized by the approving authority of the Central Government for the same purpose. This process may involve the revision of forms which have in the earlier stages been allowed by the same approving authority, under pressure of urgency and inadequate organization for detailed scrutiny.

While it is true that newly-created local authorities may be seriously handicapped by lack of experience and of experienced officers in this class of difficult work, it is none the less necessary that every endeavour be made to conform to established principles. The process of making complete codes of byelaws which satisfy these principles and requirements must take some time, and present many doubts and difficulties, but these considerations afford no excuse for the raising of a great structure of imperfect and sometimes rotten law, which sooner or later will have to be demolished at great public expense and inconvenience. It is probably clear from the above outline that such undesirable consequences could only be avoided by the employment of experienced specialist officers in the department responsible for control of the local government system.

Town Planning Schemes, however, have almost unlimited scope; require confirmation by the Central Government; expose the local authority to claims for compensation; are not necessarily restricted to the area of the local authority which makes them, and have, as a rule, full force and effect as if enacted by the Central Legislature. This form of subordinate legislation is mainly due to the inadequacy of the older byelaw-making powers for the problems created by twentieth century urban growth.

The additional powers conferred on local authorities by the first Town Planning Act in England proved, however, to be both inadequate and also largely abortive. They were, in consequence, greatly enlarged by subsequent Acts; but in granting extended powers Parliament at one stage withdrew the power of final approval from the responsible Minister and re-assumed it itself. This signified the deliberate refusal of Parliament to surrender to any subordinate body whatever—or even to a Minister of the Crown—such far-reaching powers of interference with the rights and liberties of the subject as effective planning control was found to require.

For these powers are very drastic, and now involve an extensive departure from the principle of compensation for "injurious affection." They involve the extinguishment of rights in relation to property which are of immemorial origin, and which were deeply rooted in English custom and beliefs as to the sanctity of property and the liberty of owners to do what they like with it.

But even with the safeguard which Parliament provided in s. 8 of and sch. 1 to the Town and Country Planning Act, 1932, by reserving final approval of planning schemes to itself, that Act also provided for an appeal to the Minister against every exercise of the planning control powers conferred on local authorities, and required that all such appeals should be heard in public.

It needs no argument at this date to support the assertion that planning control powers of this kind cannot safely be conferred upon immature local authorities, without, at the least, providing at the same time adequate administrative machinery, in the hands of experienced specialist officers in some department of the Central Government, to exercise an overriding supervision and control, and to discharge the vitally important quasi-judicial functions which constitute such a large part of the whole system.

Nor is it necessary to enlarge upon the manifest impropriety of removing such enactments as planning schemes out of reach of Her Majesty's power of disallowance. For, again, it must be borne in mind that planning schemes, when approved by the sanctioning authority, usually take effect as Acts of the Legislature, and may in some cases even include provisions which repeal other Acts of the Legislature. It might indeed be questioned whether a Colonial Ordinance having such an effect as this is *intra vires* the Letters Patent for any Colony; but, be that as it may, it is probably clear enough from the considerations brought forward above that no Crown Colony is really competent or equipped for such heavy responsibilities and dangerous functions.

Town and country planning control in England is now very different both in principle and practice from the original intentions, not only of the apostles who preached it in the early years of this century, but also of the Parliament which gave it legislative sanction. The first English Town Planning Act of 1909 provided for the control of development on undeveloped land only, by means of planning schemes which, when approved by the old Local Government Board, took effect as Acts of Parliament.

But that Act proved to be based on principles far too narrow and restricted, and to involve commitments so dangerous and unexpected, that nothing could be done under it. In 1919 a serious flaw in it was remedied by amendment, but the greater objections remained, so that the Act was still, to all intents and purposes, a dead letter in England.

Unfortunately it was not so regarded in the Colonies, which look to the Mother Country for guidance—or at any rate for a good example—and the English Act was quickly adopted as an example on which Colonial Ordinances could safely be modelled. But it was not perceived that English enactments designed to be operated through and by means of the established system of local government in England might be wholly unsuitable as models for countries where no such system as yet existed. In some cases a local government system was not to be set up for many years, and by that time the most unfortunate consequences had ensued. In the meantime the whole basis and scope of planning control was changing in England, so that even if local government systems had existed in the countries so anxious to follow the English lead in planning, any steps in that direction would probably have led to undesirable results.

The English Act was amended again in 1925, and was replaced by an altogether new Act in 1932, and by that date revolutionary changes had occurred in the conception of what can be, and ought to be, done under planning control, and as to the means by which it can be operated. The original idea that future development and re-development could be forecasted with sufficient accuracy to justify the preparation of planning schemes which could safely be given the force of law, and in which the inevitable disturbance to property values would be remedied by the balancing of compensation payable against betterment recoverable, has now been wholly abandoned, and no properly informed person would ever again attempt to commend the adoption of planning legislation with arguments based on that theory.

Those ideas have failed completely in practice and have been replaced by methods radically different under the Town and Country Planning Act, 1947. These methods are still in an experimental stage in England, and cannot safely be adopted anywhere else. They involve two fundamental departures from the original principles:—*first*, abandonment of the attempt to lay down in advance rigid lines and limitations for future development, and, *secondly*, the extinguishment in a large measure of the hitherto undisputed right to compensation by property owners for " injurious affection."

Planning control as now exercised in England is a discretionary power to allow or to prevent any and every kind of development anywhere at all, within certain elastic limitations, subject to a right of appeal to the Minister against refusals of planning permission.

For the discharge of this judicial function the Minister maintains a large establishment of highly qualified inspectors, by whom quasi-judicial public inquiries are held into every appeal and recommendations are made before a decision is given. The Minister's decisions cannot be challenged in the courts, and consequently public inquiries are conducted with all the formality of judicial proceedings at which interested parties are usually represented by counsel or by solicitors. Such inquiries may last for several days or even for weeks, during which the evidence of scores of witnesses and arguments by legal experts have to be heard.

It is clear that no such administrative machinery as this could be set up in any colony, and that if it could be set up it would not work. The English model cannot, therefore be taken for adaptation to colonial conditions in this matter of planning control: and it must seem at first that if this is so planning control powers must be withheld.

This, however, is not possible. Planning control is a vital necessity to every colony if disastrous consequences in the future are to be averted. Neither byelaws nor regulations can be made to take its place; for neither can be adapted to the basic factors of speed and flexibility which are characteristic of the needs of this century.

If, then, planning control cannot be dispensed with altogether in the colonies, and if it is impossible to provide for it by measures based on English practice and experience, it is evident that special measures should be devised for dealing with the problem.

That such measures could be devised there can be no doubt, but the problem would need to be studied by people with practical experience and special knowledge of both planning and colonial problems and circumstances, over the whole field of public administration in both the central and local government systems.

WEEKLY NOTES OF CASES

COURT OF CRIMINAL APPEAL

(Before Lord Goddard, C.J., Ormerod and Ashworth, JJ.)

R. *v.* SETH-SMITH AND OTHERS

July 30 and October 2, 1956

Criminal Law—Conspiracy—Conspiracy to commit crime abroad—When indictable in England—Conspiracy to defraud Germans in Germany not indictable.

Criminal Law—Conspiracy—Conspiracy to utter forged documents—Uttering—Posting in England of letter containing forged documents—Forgery Act, 1913 (3 & 4 *Geo. 5, c.* 27), *s.* 6 (2).

APPEAL against conviction.

The appellants, S and O, were indicted at the Central Criminal Court before DONOVAN, J., on an indictment containing six counts. They were both convicted on two counts, the first of which charged them with conspiring to defraud Z.A.K., an authority established by the government of Western Germany to control the export of metals, by causing Z.A.K. to grant licences to export metals from Germany by fraudulent representations that the metals would be supplied to and consumed by Irish manufacturers, when the appellants well knew that such metals were to be exported to eastern European countries. The second of these counts charged them with conspiring to utter forged documents purporting to be " end-user certificates " made and given by a government department in Ireland certifying that the metals would not be re-exported, knowing the same to be forged and with intent to defraud. O was convicted on a further count charging him with uttering one of these forged certificates. S was sentenced to three years and O to four years' imprisonment, but DONOVAN, J., granted a certificate for appeal on the question whether a conspiracy in England to effect an unlawful object abroad is indictable in England.

Held, that the rule was that a conspiracy to commit a crime abroad was not indictable in England unless the contemplated crime was one for which an indictment would lie in England, *e.g.*, bigamy, which by statute was punishable in England wherever committed by a British subject. In the present case the plot, though formed in England, was to be carried out in Germany and the persons intended to be defrauded were Germans in Germany. No offence, therefore, was committed for which the appellants could be indicted in England, and the first count charged a conspiracy which was not indictable, and the conviction on it must be quashed. With regard to the second count charging conspiracy, it was open to the jury to infer that each letter with its enclosed forged document was sent by post from England to Germany, and the posting of a letter containing a forged document constituted an uttering of the document within the meaning of s. 6 (2) of the Forgery Act, 1913, and, therefore, there was evidence to show that the object of the conspiracy was carried out in London. It would have been sufficient to show that the object of the conspiracy might have been carried out in England, and so on this count the appellants could properly be indicted in England and the conviction on it must be affirmed. The sentences would be reduced in the case of S to one of 18 months', and in the case of O to one of two years' imprisonment and the appellants would be allowed half the costs of their appeals.

Counsel: *Karmel, Q.C.* and *Baillieu* for the first appellant; *Neil Lawson, Q.C.*, and *Sebag Shaw* for the second appellant; *Faulks* and *Hirst* for the Crown.

Solicitors: *Stikeman & Co.; Galbraith & Best; Solicitor, Board of Trade.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

QUEEN'S BENCH DIVISION

(Before Lord Goddard, C.J., Hilbery and Ashworth, JJ.)

SAMPLE AND ANOTHER *v.* HULME

October 4, 1956

Pedlars—Acting as such without certificate—Goods to be offered for sale carried in motor van—Travel to town in van—Van parked in town—Travel on foot in town from house to house carrying goods—Pedlars Act, 1871 (34 & 35 *Vict., c.* 96), *s.* 3.

CASE STATED by Dewsbury justices.

At Dewsbury magistrates' court an information was preferred by the respondent Hulme, a police officer, charging the appellants, Dennis Sample and Jack Walmesley, with unlawfully acting as pedlars without having obtained a certificate, contrary to s. 4 of the Pedlars Act, 1871.

The justices found that on the day in question, the appellants, who were employed by a firm in Barnsley, travelled to Dewsbury with two other employees of the firm in a motor van in which were carried goods which the appellants intended to offer for sale or to use as samples. The appellants had no horse or other beast bearing or drawing a burden. In Dewsbury the motor van was parked in Reform Street and the appellants left the van and went separately and on foot from house to house in Reform Street carrying goods with them. The justices considered that the appellants had acted as pedlars as defined by s. 3 of the Act of 1871 at a time when they were not holders of pedlars' certificates, convicted the appellants, and fined them 10*s.* each. The appellants appealed.

By s. 3 of the Pedlars Act, 1871 "The term 'pedlar' means any hawker, pedlar, petty chapman, tinker . . . or other person who, without any horse or other beast bearing or drawing burden, travels and trades on foot and goes from town to town or to other men's houses, carrying to sell or exposing for sale, any goods."

Held, that the word "travels" could not be confined to travelling by trains or travelling from one town to another; a person travelled within the meaning of s. 3 on foot as soon as he had left his vehicle or a horse; the justices had come to the only possible conclusion; and the appeal must be dismissed.

Counsel: *Elwes, Q.C.*, and *Syrett* for the appellants; *A. G. F. Rippon* for the respondent.

Solicitors: *Paisner & Co.; Sharpe, Prichard & Co.*, for the Town Clerk, Dewsbury.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

LANGTON *v.* JOHNSON

October 4, 1956

Road Traffic—Heavy motor car—Efficient braking system—Six-wheeled vehicle—Foot brake operating on all six wheels—Hand brake operating only on two rear driving wheels—Motor Vehicles (Construction and Use) Regulations 1955 (*S.I.* 1955, *No.* 482), *reg.* 39 (1).

CASE STATED by the recorder of Sheffield.

At Sheffield magistrates' court an information was preferred by the prosecutor, Edward Armstrong Johnson, an inspector of police, charging the defendants, Ernest Langton and Robert Earl & Sons (Transport), Ltd., with unlawfully using a heavy motor car which did not comply with reg. 39 (1) of the Motor Vehicles (Construction and Use) Regulations, 1955. The justices convicted the defendants, who appealed to quarter sessions.

The recorder found that the vehicle was a six-wheeled Albion lorry equipped with four front steering single wheels running in pairs on two axles one behind the other and two rear driving wheels on an axle at the rear of the vehicle. The two rear wheels were each twin wheels, but each of them counted as a single wheel by virtue of reg. 3 (4). The vehicle was equipped with two braking systems consisting of a foot brake which operated by hydraulic means on all the six wheels of the lorry and a hand brake which was rod operated on only the two rear driving wheels. The vehicle was being driven by Ernest Langton, a servant of the owners of the vehicle, the defendants. The recorder was of the opinion that the defendant's vehicle was equipped with an efficient braking system within the meaning of reg. 39 so as to comply therewith, and so allowed the appeal. The prosecutor appealed to the Divisional Court.

The Motor Vehicles (Construction and Use) Regulations, 1955, reg. 39 provides: "(1) Every heavy motor car shall be equipped with an efficient braking system or efficient braking systems in either case having two means of operation so designed and constructed that notwithstanding the failure of any part (other than a fixed member or a brake shoe anchor pin) through or by means of which the force necessary to apply brakes is transmitted, there shall still be available for application by the driver to not less than half the number of the wheels of the vehicle brakes sufficient under the most adverse conditions to bring the vehicle to rest within a reasonable distance . . . (7) For the purpose of this regulation . . . not more than one front wheel shall be included in half the number of the wheels of the vehicle for the purposes aforesaid . . ."

Held, that the proper approach to the construction of the regulation was to ascertain the number of wheels, in the present case six, and then to ascertain the notional half by dividing the number of wheels by two; one had then to see that the braking system applied to the half, but within the half there should be not more than one front wheel; in the present case no front wheel was included in the hand braking system, which applied only to the two rear wheels; and, therefore, there had been a failure to comply with the regulation, and the appeal must be allowed.

Counsel: *J. I. Arnold* for the prosecutor; *D. T. Lloyd* for the defendants.

Solicitors: *Sharpe, Pritchard & Co.*, for Town Clerk, Sheffield; *Bell, Brodrick & Co.*, for *A. B. Thorneloe & Son*, Sheffield.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

PROBATION OFFICER'S REPORTS

Members of the Probation Service will have read with great interest your comments on the matter that was recently raised by the chairman of a quarter session appeal committee. We are glad you share the views of the service about the responsibility of the court for the presentation of reports. We also respect but cannot fully accept your suggestion that it is perhaps going rather far for a probation officer to suggest some form of punishment. As you rightly say, this is best left to the court but the probation officer is required to provide a report for the guidance of the court and in some circumstances this surely may include his opinion about the treatment which will be most appropriate for the person on whom he is reporting. An opinion is, of course, not necessarily a recommendation and the probation officer knows full well that the court may not accept his opinion. It should be known, however, that in many places today the magistrates are inclined to encourage probation officers to make a recommendation, it always being understood that when all the circumstances of the case are known the recommendation can be seen in its proper perspective.

Yours faithfully,
FRANK DAWTRY,
General Secretary.

National Association of Probation Officers,
2 Hobart Place,
Eaton Square, S.W.1.

BOOKS AND PAPERS RECEIVED

The Inspector. Official journal of the Institute of Shops Acts Administration. Series IV, Vol. 2—No. 6.

The Lawyer's Remembrancer and Pocket Book, 1957. Revised and edited for the year 1957 by J. W. Whitlock, M.A., LL.B., assisted by S. H. W. Partridge, M.A. London: Butterworth & Co. (Publishers) Ltd. Price 15*s.*, postage 9*d.* extra.

Christ Church Meadow plans remind us
We can make the place sublime,
And departing leave behind us
Tyre-marks in the Sandys of Time.

J.P.C.

One of the oldest stories told
Is how a poor stranger is solemnly sold
Some public place like the Albert Hall,
Which isn't of course for sale at all.

This ancient tale will no doubt revive,
And some further currency perhaps derive,
From the fact that in Ireland, the home of blarney,
An American's actually bought Killarney.

J.P.C.

MAGISTERIAL LAW IN PRACTICE

The Western Morning News. August 14, 1956

BENCH RECOMMENDS MAN'S DEPORTATION

Edward Lane, aged 43, *a homeless Irish labourer, was sent to prison for six months at Bridgwater yesterday for thefts from two men residing at Monmouth Hall Hostel, Dunball. The magistrates made a recommendation for his deportation from the country at the expiration of the sentence.*

Lane pleaded guilty to stealing two suits, a driving licence, and insurance certificate, valued £20 1*s., the property of Derek Roberts, and a suitcase and two towels, valued* £2 1*s.* 10*d., from Leslie Carr.*

Under the provisions of art. 20 (2) of the Aliens Order, 1953 (S.I. 1953 No. 1671) a court may recommend to the Secretary of State that a deportation order be made in the case of an alien convicted of any of the offences specified in sch. 4 to the order.

A citizen of the Republic of Ireland is not an alien. Section 2 of the Ireland Act, 1949, declares that the Republic of Ireland is not a foreign country and that references in any Act of Parliament, other enactment or instrument whatsoever, whenever passed or made, to foreigners, aliens, foreign countries, and foreign or foreign built ships or aircraft shall be construed accordingly.

In the British Nationality Act, 1948, "alien" means a person who is not a British subject, a British protected person or a citizen of Eire; and "foreign country" means a country other than the United Kingdom, a colony, Canada, Australia, New Zealand, the Union of South Africa, Newfoundland, India, Pakistan, Southern Rhodesia, Ceylon, Eire, a protectorate, a mandated territory and a trust territory (ss. 32 (1) and 1 (3)).

East Anglian Daily News. August 31, 1956

SIX MEN SENT FOR ASSIZE TRIAL

Appear on Charges at Woodbridge

Six young men, aged between 17 *and* 26, *were committed for trial at Suffolk Assizes by Woodbridge magistrates yesterday charged with having carnal knowledge of or attempting a like offence with three girls over* 13 *and under the age of* 16.

Robert Stebbings (19), *a farm worker, of* 14 *King Edward Avenue, Wickham Market, faced four charges concerning the three girls. Three of the charges were of having carnal knowledge with one of two girls in September*, 1955, *on May* 26 *at Campsea Ash, and May* 27, 1956, *at Wickham Market, and the fourth of attempting a like offence against the third girl in March*, 1956, *at Hacheston.*

Kenneth William Clarke (26), *a plumber, of Broad Road, Wickham Market, was charged with attempting a like offence on January* 1 *in Wickham Market.*

James Stebbings (17), *also of* 14, *King Edward Avenue, Wickham Market, was charged with having carnal knowledge of one of the girls in February*, 1956, *and April*, 1956, *at Wickham Market.*

All three, who reserved their defence, were represented by Mr. A. R. G. Curjel.

David Henry Walker (18), *a farm worker, of* 7 *Friday Steet, Rendlesham, was charged with having carnal knowledge of one of the girls between July* 25 *and September* 31 *and in October*, 1955, *at Pettistree. Peter Boon* (21), *a tractor driver, of Hamilton Cottages, Parham, was charged with having carnal knowledge between July and August*, 1955, *at Dallinghoo. Derek Reginald Barnes* (21), *an able seaman, of H.M.S. Pembroke, Chatham, was charged with carnal knowledge and attempting to commit a like offence between April* 1 *and May* 31 *at Pettistree.*

All the accused were granted defence certificates.

It will be observed that in this report the names and addresses of the girls, quite properly, are not given.

Section 39 of the Children and Young Persons Act, 1933, provides that in any proceedings arising out of any offence against or any conduct contrary to decency or morality the court may direct that no newspaper shall reveal the name or other identifying particulars of any child or young person concerned in the proceedings.

On February 14 last the Home Office issued a circular to justices' clerks drawing attention to that section and suggesting steps to be taken to see that full advantage is taken of the powers available, so that juvenile witnesses are protected where necessary and so that newspapers are in no doubt whether they may or may not publish identifying particulars. (*See Note of the Week* under the heading *Juvenile Witnesses and Publicity* at p. 177, *ante*)

Section 37 of the Children and Young Persons Act, 1933, gives power to clear the court (except for members or officers of the court, parties to the case, their counsel or solicitors, persons otherwise directly concerned in the case, and the press) while a child or young person is giving evidence in any proceedings in relation to an offence against, or any conduct contrary to, decency or morality.

PERSONALIA

APPOINTMENTS

Mr. R. A. R. Gray, LL.B., has been appointed deputy clerk of Malvern, Worcs., urban district council. Mr. Gray, who was admitted in February, 1954, is at present senior assistant solicitor to the borough of Solihull, Warwicks., and has previously held appointments with the borough of Luton, Beds., the county borough of West Bromwich and the borough of Surbiton, Surrey. He was articled to Mr. R. H. Wright, the town clerk of Surbiton. Mr. Gray will commence duty with the Malvern council on November 12, next. Mr. Gray succeeds Mr. T. J. Marriott, who has been appointed, as from November 1, 1956, to be deputy clerk of Ruislip-Northwood, Middx., urban district council. Mr. Marriott, who was articled to Mr. C. Vivian Rowe, LL.B., town clerk of Northampton, was admitted in 1950, and has previously held appointments as assistant solicitor to the county borough of Northampton and senior assistant solicitor to Hornchurch, Essex, urban district council. Mr. Marriott was the first urban district council's officer to attend the Administrative Staff College under the Local Authorities' Joint Admissions Scholarships Scheme.

Mr. Roger S. Spackman, at present assistant solicitor to Malden and Coombe corporation, Surrey, has been appointed deputy town clerk of Pontefract, Yorks. He will succeed Mr. C. Rhodes, who will retire after serving in the town clerk's office at Pontefract since 1931. Mr. Rhodes previously served as deputy town clerk with Ossett, Yorks., corporation, and on retirement will have completed 50 years' service in local government.

Detective-Superintendent K. G. Julian has been appointed assistant chief constable of Cornwall. Mr. R. B. Matthews was recently appointed chief constable of the county.

Superintendent H. K. James, of the Taunton division of Somerset constabulary, has been appointed new police superintendent at Weston-super-Mare to fill the vacancy caused by the death of Mr. H. J. Baker, and will take over the duties on October 28, next. Superintendent James joined the force in 1932, and his promotion to the rank of superintendent came in 1954.

Chief Inspector George E. Ridley, of the Keighley division of the West Riding of Yorkshire constabulary, is to be commandant of the Police Training Centre, Pannal Ash, Harrogate, in succession to Mr. E. W. Staines, the newly appointed chief constable of Derby.

RETIREMENTS AND RESIGNATIONS

Mr. Charles Lamond Henderson, Q.C., will relinquish the post of chairman of Bedfordshire quarter sessions on December 31, next. His successor will be announced shortly.

Mr. Henry Broome Durley Grazebrook has retired as recorder of Penzance, Cornwall, on reaching the age limit. Mr. Grazebrook took his oath as recorder of the borough on January 28, 1941.

Mr. Walter Heap, for the past twenty-seven years town clerk of Lytham St. Annes, Lancs., is to retire in March when his period of office ends. In April 1954, Mr. Heap reached retiring age and in the following January had his services extended for two years—up to next March.

Mr. Leslie King Lodge, clerk to the justices for the county borough of Northampton, is retiring on pension on December 31, next, having reached the age of 65 years. He was admitted, having passed the final examination of the Law Society (including book-keeping and accounts) before attaining the age of 21 years. Mr. Lodge served articles of clerkship with the Hampshire firm of Messrs. Lamb, Brooks, Sherwood and Bullock, who had offices at Odiham, Aldershot, Basingstoke and Reading. A member of this firm held the appointments of clerk to the justices at Odiham, Aldershot and Basingstoke. Mr. Lodge served throughout the first world war, joining up in the ranks and afterwards obtained a commission. In 1919 he went to Southend-on-Sea as deputy clerk to the justices, and served with the late Mr. H. R. Fanner there until 1927. Then, holding the same position, he went to Romford, Essex, for approximately 10 years. Mr. Lodge was appointed clerk to the justices for the county borough of Northampton in 1937.

Mr. Philip Tomkins, chief constable of Denbighshire, is retiring next March for health reasons. Mr. Tomkins, who was awarded the King's Police and Fire Service Medal for distinguished service in the New Year Honours List of 1950, was appointed deputy chief constable of Denbighshire in April, 1942 and transferred to Wrexham from Colwyn Bay in August, 1942. He became chief constable in 1946 in succession to the late Mr. G. T. Guest. Mr. Tomkins joined the Denbighshire constabulary in 1919 and was promoted chief clerk in the chief constable's office in 1922.

Superintendent D. F. Benstead, head of the Farnham, Surrey, police division, is to retire on October 31, next.

FOOD FOR THOUGHT

Students who plod along the main high-road of legal history pass now and then the entrance to some queer byway which they promise themselves one day to explore. Those whose journey's end is the busy junction where solicitors are "admitted" and barristers are "called" seldom find time to retrace their footsteps. It is only the scholar or the dilettante who can meander back the way he has come, looking for one of those inviting turnings that attracted his notice the first time he passed. If he rediscovers it, and follows its winding course, he will come across some quaint bits of architecture, well worth his reconnoitring. And frequently, among those old, tumbledown buildings, he will note some quality of style or use of material that vividly recalls certain features in the modern, streamlined edifice he has left behind.

Laws regulating the sale and consumption of food and drink are a commonplace of modern civilization. The restrictive legislation (both parliamentary and delegated) of two World Wars enforced upon our beleaguered Island a number of needful austerities. Many of these survived the termination of hostilities —food-rationing and controls of several kinds. Some, after dragging out their miserable existence in the teeth of public execration, have died unhonoured and unsung; others are with us still. This last category is held by some people to be still necessary and desirable for the protection of our national economy; others whisper that the whole thing is nothing but a pretext for bureaucracy—an excuse for keeping unwieldy staffs of officials at the tax-payer's and the ratepayer's expense.

We do not presume to take sides in this controversy, either with the abolitionists or with the champions of control. We merely invite both sides to consider those sumptuary laws which rulers, both ancient and modern, have at different times imposed upon their unwilling subjects, avowedly in the cause of economics, egalitarianism or ethics. In Republican Rome the *Lex Fannia* of 161 B.C. limited the amount that might be spent on entertainment, providing (*inter alia*) that no fowl should be served save one single hen—*and that unfattened.* This sounds far more drastic than our war-time limit of 5*s.* on a meal, which at any rate left some scope for the ingenuity of the *restaurateur* and enabled him so often, on the highest patriotic grounds, to reconcile chicken on the menu with rabbit in the dish. The dictator Lucius Sulla, an addict in his early years to the pleasures of the table, became, in his days of power, like many another convert, most zealous in prosecuting ostentatious luxury to the utmost rigour of the law. The great Caesar was, at one stage of his career, *praefectus moribus* or Guardian of Public Morals; the historian Suetonius describes how his lictors, or enforcement officers, were stationed in the markets to seize prohibited foodstuffs.

Among modern states France, Spain, Italy, England and Scotland have enforced sumptuary laws. In the thirteenth century Edward II issued a proclamation against "the outrageous and excessive multitude of meats and dishes" used by extravagant people at their meals. Undeterred by the horrible death which befell that unfortunate monarch, his son, Edward III, made it unlawful for "the servants of gentlemen, merchants and artificers" to eat more than one meal of fish or flesh *per diem.* The Scottish King James I enacted, in 1433, a law whereby the use of pies and baked meats was forbidden to anybody under the rank of baron. (It is interesting to observe how, a century before Calvin, ordinary Scotsmen were already taking their pleasures sadly.)

For us today all this has a familiar ring. Methods may differ, but the results are the same as ever—to deprive people—ostensibly for their own sake—of what they want. Whether it is done by means of prohibitions under penalty, or by the imposition of exorbitant excise duties; by proscribing extravagance, or by subjecting certain foods to ministerial control, makes little difference. There will always be, in our Lilliput, the Big-Endians and the Little-Endians—those who regard all liberty as licence, and those who scent tyranny in all restriction.

Talk of Big-Endians and Little-Endians calls to mind a recent case at Bishops Stortford, Herts., which emphasizes the dangers of putting all your eggs in one basket. Inspectors of the Egg Marketing Board had reported that the eggs sold by a Romford retailer—aptly named Mr. Duck— did not bear an official grading-stamp. The wholesalers were duly summoned for this heinous offence, and the Ministry's Enforcement Officer appeared as chief prosecution witness. In the box he provided a graphic illustration of the aphorism *Quis custodiet ipsos custodes*? Having been asked the embarrassing question—"Will *your* wife buy stamped eggs?" (says the *News Chronicle*) he replied: "She prefers them unstamped." In face of this damaging admission, and of the defendants' plea that their grading-machine had broken down, and despite the first-hand evidence of Mr. Duck himself—to the effect that shop eggs are anything from three to four weeks old, while these unstamped eggs are conveyed from hen to housewife within 48 hours—the defendants were convicted and fined.

A novel instance of modern sumptuary legislation is concerned with those twin pillars of the Ministry of Agriculture and Fisheries—*viz.* fish and chips. This humble dish is a delicacy much in favour with the hungry masses, and we are reluctant to express any views calculated to interfere with their simple pleasures. The habit which has grown up of devouring fish and chips *coram publico*, instead of in the privacy of the home, is distressing to fastidious persons, as is also the use of last Saturday's newspaper as a container. (Perhaps some of the objections would be removed if customers insisted on having their purchases wrapped in copies of *The Times* or the *Manchester Guardian* exclusively). Whatever may be the conflicting views on the general question, the habits of a section of the population of Great Yarmouth are causing serious concern to the Town Council. This staple diet of the Englishman at leisure is so much in favour in that port that he enjoys his banquets in all sorts of unlikely places—even on the Corporation's buses, where they leave greasy smears on the seats and *debris* from the feast upon the floors. Passengers who are non-addicts have complained of damage to their clothing, and one conductor has slipped upon a chip dropped on the bus-stairs and injured his spine. The Town Council is seriously considering whether the fish-and-chip-eaters can be restrained by existing regulations, or whether it has power to introduce a bylaw to make the practice illegal. Feelings are running high on both sides; the Council's protests have already produced a *riposte* from the National Federation of Fish-Fryers, which alliteratively-named body has been at pains to point out that "it is not the food itself, but the way people eat it, that is in issue."

Roman law and historical precedent unfortunately afford no guidance in this controversy. It is now left to the Council to make history by providing that the consumption of fish and chips elsewhere than at home or in a restaurant—perhaps we may coin a phrase and call it the *res digestae*—shall be prohibited on vehicles of public transport as *res non omnibus aptae.*

A.L.P.

PRACTICAL POINTS

All questions for consideration should be addressed to " The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Children and Young Persons—*Attendance centre order—Boy subsequently said to be under 12—Validity of order.*

At a recent sitting of my juvenile court a child appeared charged with three others of housebreaking and larceny. He was stated in the police report to be 12 years of age. He was asked by the clerk how old he was and he said he was 12. His father was present and made no comment. He pleaded "Guilty" as also did the other three who were all over 12. This boy, together with the three other boys was sentenced to 12 hours attendance at an attendance centre. He arrived at the centre at the time directed by the court with his mother. The police officer in charge asked the boy's age and his mother then said he was only 11, and would not be 12 until October next. The police officer therefore refused to accept him and sent him home.

It is suggested that the sentence of the court was void and therefore there has been no adjudication. It is proposed to bring the boy and his father again before the same court in order that a lawful sentence may be imposed. Presumably he will be placed on probation.

My attention has been drawn to the provisions of s. 80 (3) of the Criminal Justice Act, 1948, and it is suggested that the sentence was in fact good. I would point out that no sworn testimony as to his age was given, but the physical appearance of the boy suggested that he was at least 12.

I shall be glad to have your views as to whether the course now proposed is the correct one.

F. JEL.

Answer.

As this is a child, s. 99 (1) of the Children and Young Persons Act, 1933, applies. Although the court did not take evidence as to the boy's age we think it was entitled to act upon his statement that he was 12, made in his father's presence and not contradicted. If this finding was recorded in the order we cannot see that the officer in charge of the attendance centre was entitled to refuse to accept the boy upon being told by the mother that he was only 11. We can appreciate his difficulty if the date of birth in the prescribed form (No. 13A, Summary Jurisdiction (Children and Young Persons) Rules, 1933), showed the boy's age to be 11, but we think his proper course was to obey the order, to release the boy without delay, and to apply to the court under s. 19 (3) of the Criminal Justice Act, 1948, for the discharge of the order, thus giving the court the opportunity to investigate the circumstances, and, if satisfied that the boy was under 12, to discharge the order.

The order having been made, the court is *functus officio* and the boy cannot be brought before it for some other order to be substituted.

2.—Criminal Law—*Further probation order made on breach of original order—Breach of further order.*

The magistrates' court at A in January, 1955, made a probation order in respect of X who was convicted of larceny. In May, 1956, the magistrates' court at B, being the supervising court dealt with X for a breach of the order and pursuant to s. 6 (3) (*a*) of the Criminal Justice Act, made a fresh probation order. X has returned to the jurisdiction of the court at A and has now committed a breach of the second probation order. The original order was for two years and the second order for three years.

1. Does the original probation order still exist or does it cease by virtue of the making of the second probation order at B?

2. Which is the original court for the purposes of the second breach?

3. Can the court at A now exercise the powers under s. 6 (3) (*a*) and commit the defendant to quarter sessions with a view to borstal training. If not would you please give, if possible an authority or is the matter still as set out in your P.P. 11 at 117 J.P.N. 696?

MEPOL.

Answer.

We are still of the opinion expressed at 117 J.P.N. 696. We do not therefore agree that the second order was made " pursuant to s. 6 (3) (*a*) of the Criminal Justice Act." Accepting the facts as stated, we would answer as follows:

1. The original order still exists. No steps have been taken to discharge it, and the defendant has not been " sentenced " for the original offence.

2. Each court is an " original court," since both orders still exist.

3. On the assumption that the phrase " X has returned to the jurisdiction of the court at A " means that court A is the supervising court under the second order, court A can commit the defendant to quarter sessions with a view to borstal training. Court A, of course, can also do this as the original court in respect of the first order.

3.—Highway—*Accident—Removal of materials.*

Under s. 73 of the Highway Act, 1835, a local authority may serve a notice on an offender requiring him to remove a deposit of material from the highway and the local authority may carry out the work of removal if such notice is ignored, and defray any expenses incurred by selling the material. If, however, the proceeds of the sale of such material are insufficient to defray expenses, payment may be levied by distress and sale of goods under the provision of s. 103 of the Act. Similarly, s. 29 of the Public Health Acts Amendment Act, 1907, and ss. 92 (1) (*c*) and 93 of the Public Health Act, 1936, also confer default powers after the requisite notice has been given. Under s. 26 of the Local Government Act, 1894, however, power is conferred on district councils to carry out the removal of materials deposited in the highway and to charge for such removal, without first having to give notice as required under the previously mentioned Acts. Such district councils are defined in the Local Government Act, 1933, as urban and rural district councils; the definition appears to exclude county and non-county borough councils from proceeding under s. 26 of the Local Government Act, 1894.

Please advise if there is any statutory or other authority which permits a county borough council to recover expenses incurred in removing and/or cleaning a highway of materials deposited thereon, particularly as the result of a traffic accident, without first having to serve notice as required by the aforementioned statutes.

PIFER.

Answer.

A county borough council and a borough council are district councils within the Local Government Act, 1894, s. 26; *see* ss. 21 (3) and 26 (7).

A local authority may remove an obstruction under that Act and may recover the expenses by action, but notice to abate should first be given to the person causing the obstruction; *see Louth Urban District Council* v. *West* (1896) 60 J.P. 600. Where an accident has caused materials to be left on the highway these are not a nuisance in law until left for an unreasonable time, or the person liable to remove them has had a reasonable opportunity of doing so: *see Maitland* v. *Raisbeck and Hewitt* [1944] 1 K.B. 689 at pp. 691, 692; 2 All E.R 272. If the council remove it under their powers and duty as highway authority before the lapse of that time, as they usually do and should do, they do it voluntarily and cannot in our opinion recover the expenses.

4.—Husband and Wife—*Discharge of maintenance order on re-marriage of wife.*

A obtains a maintenance order against her husband whom she several years later divorces, but no order for maintenance is made in the proceedings. She then re-marries and the former husband thereupon applies to the justices for the revocation of the order. A opposes the application on the grounds that her present husband may die and therefore wishes to preserve the right to once more claim maintenance from her former husband. Instead of revoking the order, the justices reduced the payments to 1*s.* a year. Is this a normal practice and were they right to do so? Having re-married, could she once more look to her former husband for maintenance should her present husband die?

HAIN.

Answer.

A decree absolute does not *ipso facto* discharge a maintenance order. The discharge of the order is in the justices' discretion, and it must be assumed in this case that they exercised their discretion. For this reason, we should prefer not to use the word " practice." Each case must be decided on its own merits.

5.—Infants—*Marriage Act, 1949, s. 3—Respondent in prison—Residence.*

An infant who resides in the jurisdiction of this court has applied for consent to her marriage. Her mother is prepared to give consent but her father who is serving a three year prison sentence in a prison a few miles beyond the jurisdiction of this court has refused his consent. It is understood that when he is released from prison the father will return to his home in this area.

Do you agree that for the purposes of s. 3 (5) of the Marriage Act, 1949, the respondent father resides within the jurisdiction of this court and the court will have power to make an order of consent?

R.C.J.B.

Answer.

We agree that the respondent resides within the jurisdiction of the court. We do not think that an enforced residence in prison is the residence contemplated in the section. Since the court has notice of the father's objection, every effort ought to be made to arrange for his attendance at the hearing.

6.—Landlord and Tenant—*Council house—Mode of service of notice to quit.*

On a recent application for possession of a post-war council house under the Small Tenements Recovery Act, 1838, because of non-payment of rent, doubts on the service of the notice to quit arose. The notice was served by the collector by pushing it through the letter box, as no person was present in the house when he called. The tenant is still in possession although there is very little furniture now in the house. It is believed that the furniture was on hire purchase and has been removed by the hire purchase company. Curtains are still up at the windows of the house. It was contended that this was not proper service, because it was not proved that the notice had come into the hands of the tenant in time to give him notice of the proper length. The applicant's solicitor submitted that as it was a council house the mode of service was governed by s. 167 of the Housing Act, 1936, which allows a notice to be left at the usual or last known place of abode of the person to be served. The point in issue appears to be whether the notice was required or authorized to be served under the Housing Act, 1936.

A. PUZZLED.

Answer.

Although a notice to quit is a common law method of ending a tenancy, as was argued in *Van Grutten* v. *Trevenen* (1902) 87 L.T. 249, that case decided that it was also given "under" a section to the same effect as s. 167 of the Housing Act, 1936. We have expressed the opinion that the decision can be relied on for the notice to quit, though not for the notice of intention under the Act of 1838 which is *sui generis*.

7.—Licensing—*Ball held on licensed premises—Tombola—Prizes presented by third parties—Whether unlawful.*

A society is organizing a ball which is to be held on licensed premises. The society proposes to run a tombola at the ball; the prizes will be given by private individuals and the proceeds of the tombola will, if necessary, be given to charity. It has been suggested that, if the tombola is an "incidental" or "private" lottery under ss. 23 and 24 of the Betting and Lotteries Act, 1934, the licensee could not be convicted under s. 141 of the Licensing Act, 1953, which forbids gaming or unlawful games on licensed premises. *The Licensing Handbook* published by C. R. Hewitt is said to bear out this view.

My observations are as follows:—

1. If, as the Divisional Court has decided (*Morris* v. *Baguley* (1937) B.T.R.L.R. 73), the drawing of a sweepstake on football teams is gaming then the tombola would be a "game."

2. The tombola cannot be a private lottery as members present at the ball will participate.

3. In Questions and Answers from the J.P., 1929–1937, at p. 76, you expressed the opinion that a dance in aid of club funds would probably be an "entertainment of a similar character," (these are the words used in s. 23 which deals with incidental lotteries) and so a raffle held at the dance would not be illegal. I infer that the tombola may be an "incidental" lottery as the ball is being run to raise funds for the society.

Will you kindly advise:

1. whether compliance with s. 23 or s. 24 of the Betting and Lotteries Act, 1934, is a defence if the licensee is charged with a breach of s. 141 of the Licensing Act, 1953;

2. whether you agree that the tombola may be an "incidental" lottery but cannot be a "private" lottery?

O. NICK.

Answer.

1. The first difficult point for consideration in relation to s. 141 of the Licensing Act, 1953, is whether the "running of a tombola" is "gaming" or "a game," alternative expressions which are not clearly distinguished in case law. Inasmuch as the tombola is not to be played for stakes, but for prizes presented by third parties there is slender authority for saying that it is not "gaming" (*see Lockwood* v. *Cooper* (1903) 67 J.P. 307; but compare *Morris* v. *Godfrey* (1912) 76 J.P. 297; *Welton* v. *Ruffles* (1920) 83 J.P. 271—all decided before the passing of the Betting and Lotteries Act, 1934). As "a game" the tombola falls within the definition of a lottery as defined in *Moore* v. *Elphick* (1945) 110 J.P. 66, and it may be argued strongly that it is not an "unlawful game" if it is not an "unlawful lottery."

Subject to certain prescribed conditions, a lottery promoted as an incident to an entertainment to which s. 23 of the Betting and Lotteries Act, 1934, applies, shall be deemed not to be an unlawful lottery; and, in our opinion, a ball such as that described by our correspondent is an entertainment to which the section applies. Therefore, if the conditions are complied with, we think that the tombola is not an "unlawful game" within the meaning of s. 141 of the Licensing Act, 1953.

2. The tombola conducted as outlined by our correspondent is not a "private lottery" within the meaning of s. 24 of the Betting and Lotteries Act, 1934.

8.—Licensing—*Death of licence holder—Protection order granted to widow—Further protection order to incoming tenant.*

On July 8, 1956, the licensee of a public house died intestate and as the next transfer sessions were to be held on July 24, more than 14 days after the death (Licensing Act, 1953, s. 22), the widow applied for a protection order as she only desired to sell until a new tenant could be found and in any case there was not sufficient time to serve notices for a full transfer.

A new tenant has now been found and notices have been served by him of his intention to apply for a protection order on July 31.

It is obvious, however, that he cannot be granted a protection order during the currency of the order granted to the widow and in the circumstances it is intended that on July 31 she shall attend the court and surrender her protection order immediately after which a fresh order will be granted to the new tenant, with the consent of the widow as her late husband's personal representative. It is also proposed to excuse her attendance at the full transfer on September 11, next, as she is leaving the district.

It is contended that the court has an inherent power with the consent of the widow to withdraw an authority to sell given to her and that it then becomes in a position to grant a fresh authority to the new tenant but I would be grateful for your opinion as to whether the proposed course is in order.

ORSAM.

Answer.

The proposed course is in order.

9.—Licensing—*Sale of chocolates containing wine or liqueurs—Whether justices' licence is required.*

A confectioner desires to sell chocolates containing wine or liqueurs. We should like to know if the confectioner requires a wine or spirits licence and must apply to the licensing justices at the annual general licensing meeting in the same way as any publican or grocer. We understand that the Customs and Excise office are not concerned unless the percentage of alcohol in the chocolates exceeds a certain limit.

We have never heard of a confectioner applying for such a licence and we can find no reference to the matter in *Paterson*. If a licence is strictly required we imagine this is more "honoured in the breach than in the observance thereof." OSWEET.

Answer.

A justices' licence authorizes the person to whom it is granted to take out an excise licence (Licensing Act, 1953, s. 1 (3)). Therefore, in our opinion, no justices' licence is required by a confectioner who desires to sell chocolates containing wine or liqueurs in respect of the sale of which no excise licence is required.

10.—Magistrates—*Practice and procedure—Proof of previous convictions in the absence of the defendant.*

I wonder if you would be good enough to clarify a point which has arisen in discussion with a friend of mine as to court procedure. The query is, that it has been suggested in the case of a defendant pleading guilty by letter, the police cannot bring forward details of any previous conviction. Should they wish to do so, they may ask for an adjournment, and insist upon the defendant being present in court.

I am chairman of a motoring court, and the procedure which I adopt is, in the case of a defendant pleading guilty by letter, I ask the police whether there is anything known. If there are previous convictions, and providing it is a person of the same name, I usually take this into consideration in determining the penalty. In some instances, these convictions are on the licence, but there are many occasions when the convictions are not recorded on the licence. However, I still take cognizance of what the police tell me. Am I correct in so doing, or should I only take into consideration the previous convictions which are proved by endorsement on the driving licence? JUSTIN.

Answer.

We know that the practice exists of allowing the police, without formal proof, to recite what purports to be a list of the previous convictions of an absent defendant, but there is no authority for this practice and we have heard of cases in which convictions so referred to have later been admitted by the police to have been wrongly attributed to that defendant.

We agree that it is unsatisfactory that an absent defendant should be in a better position in this respect than one who takes the trouble to attend. Moreover, if a defendant is represented by an advocate, who has no instructions about any previous convictions, his personal appearance cannot be compelled (Magistrates' Courts Act, 1952, s. 99).

Convictions recorded on a driving licence which is produced to the court cannot properly be taken into account (Road Traffic Act, 1934, s. 33 (2)).

One of the recommendations of the Departmental Committee on the Summary Trial of Minor Offences was that there should be a change in the law to permit of the easier proof of previous convictions when a defendant does not appear.

11.—Public Health Act, 1936—*Unauthorized connexion to sewer.*

My council have erected a large number of council houses in one of their parishes, and in one or two cases a little difficulty has been experienced with flooding of the back gardens. Apparently the subsoil is mostly clay, and the water gathers on the surface and takes some little time to drain away. After a recent fall of rain it was noticed that, whilst the remainder of these particular gardens were flooded, one of them seemed to be clear of water, and inquiries were made of the tenant as to how he had managed to clear his garden of this flooding. As the tenant was not very co-operative a smoke test was put on the sewers, and it was found that an opening had been made in the foul water sewer. I enclose a plan showing the property concerned coloured brown, and the foul water sewer shown terra cotta. The tenant had apparently excavated a trench in his garden and broken into this foul water sewer by three holes surrounded with rubble. This foul water sewer discharges into a public foul water sewer shown marked red on the plan and there is also a separate surface water system as indicated in yellow, green, and blue.

Under the provisions of s. 34 of the Public Health Act, 1936, before a prosecution can be sustained, it would appear that it would have to be proved that the tenant had connected "directly or indirectly to a public sewer," but the foul water sewer into which he has connected is not a public sewer but a private sewer provided by the council for their housing estate. It has been suggested to me, however, that the word "indirectly" might bring this case within the section, as the private housing sewer does eventually discharge into a public sewer. As this point of discharge is, however, some considerable distance away, I think it would be stretching the section to suggest that this tenant had discharged indirectly into a public sewer.

If you feel that a case does not lie under s. 34, is there any remedy in law against a person breaking into a separate foul water drainage system as in this case and discharging surface water thereto.

Section 41 of the Act appears to be available to a rural district council if they had adopted before the 1936 Act, s. 39 of the Public Health Act, 1925, but this council had not, in fact, adopted that section. It is appreciated that an application could be made to the Minister for s. 41 to be applicable to this area, but as I presume that any such order would not be made retrospective then this section could not be applied in the circumstances outlined above.

PLAXTON.

Answer.

In our opinion, the connexion is clearly an indirect discharge into the foul sewer.

12.—Rating and Valuation—*Premises not used but not abandoned.*

A local cinema has not been paying its way for some time, and there is a balance of rate owing to the local corporation in respect of part of the rating year 1954–55 when the cinema was being used as such. Since April 1, 1955, the cinema has been closed as such and the cinematograph licence has not been renewed. The cinema could be used at any time provided a cinematograph licence was obtained. The present owner has no intention of returning because of the financial position. I shall be obliged if you will advise me whether the premises are rateable for the period since the use of the cinema was discontinued, and if so upon what basis.

COLNEL.

Answer.

The cases are not easy to reconcile, but we should say the premises are still occupied: *see Liverpool Corporation* v. *Chorley Union* (1913) 77 J.P. 185, and other cases noted therewith in *Ryde*.

13.—Road Traffic Acts—*Limited trade licence—Duplicate entries in book not completed and not carried, and excess persons carried—Offence.*

A is the holder of a limited trade licence. B, an employee of A, is authorized to demonstrate to a prospective purchaser under that licence a new motor car. When seen by the police B is driving the vehicle which is bearing the limited trade licence plates and in the vehicle are six other persons being the prospective purchaser and members of B's family. The duplicate entries in the book relating to the licence are not completed and carried with the vehicle.

Regulation 30 of the Road Vehicles (Registration and Licensing) Regulations, 1955, relating to limited trade licences, art. B, reads:

(1) *Subject to the provisions of para.* (2) of this article the holder of a limited trade licence may use under that licence on a public road any mechanically propelled vehicle for which such licence is appropriate if the vehicle is being used for any of the following purposes:

(*i.e.*,) (iii) For its test or trial for the benefit of a prospective purchaser . . .

(2) *Nothing in the preceding provisions* of this article *shall authorize the use* of a mechanically propelled vehicle under a limited trade licence *if* the duplicate entries from the book referred to in art. C of this regulation are not properly completed and carried along with the vehicle *or* for any of the following purposes:

(*a*) (to carry any person other than the driver and not

(iv) more than two other persons who may be employees or (i) and (ii) prospective purchasers).

Having regard to the wording of art. B do you consider that:

1. The failure to carry the duplicate entry, and/or the carriage of more than two persons other than the driver, deprives the user of the protection of the limited trade licence rendering him liable to prosecution for using an unlicensed vehicle; or:

2. The vehicle is being "used," albeit improperly, under the limited trade licence, and

(*a*) the failure to carry the duplicate entry; and

(*b*) the carriage of more than two persons other than the driver;

are offences under these regulations for which A and/or B may be prosecuted? I. DEVA.

Answer.

1. No.

2. The offence is one, contrary to reg. 30 art. B (3), of using a vehicle under a limited trade licence for a purpose other than one for which its use is authorized by para. (1) of art. B.

A, as the holder of the licence, is using the vehicle and B's offence is that of aiding and abetting A.